

A Regional Solution for Human Rights and the End of Weapons of Mass Destruction in North Korea

*Grace M. Kang**

Abstract

Since October of 2002, the international community has been focused solely on resolving the issue of North Korea's pursuit of nuclear weapons capability, despite other significant threats posed by the reclusive regime. These problems include North Korea's probable possession of one of the world's largest chemical weapons arsenals, its biological weapons capability, its trade in missiles and illegal goods, its potential linkage to terrorists, and its horrendous human rights violations.

A comprehensive solution to the threats posed by the DPRK is necessary for achieving true security. Linkage of various issues, including human security and economic benefits, should be utilized to achieve progress. This solution should incorporate existing legal conventions to create an architecture of standards for achieving security. Broadening the scope of negotiations also provides more opportunities for cooperation on economic, scientific, and educational issues. East Asian states should seize the opportunity to find common ground and create a permanent security structure for the region. Resolving the DPRK problem within this context would improve the prospects for a more sustainable security.

* J.D. Visiting Assistant Professor, Seoul National University.

I. Introduction

Since the revelations in October 2002 of North Korea's pursuit of nuclear weapons capability, the international community has been focused on resolving that issue exclusively, despite other significant problems posed by North Korea. These problems include North Korea's possession of probably one of the world's largest chemical weapons arsenals, its biological weapons capability, its trade in missiles and illegal goods, its potential linkage to terrorists, and its horrendous human rights violations. In short, North Korea represents virtually every major international relations threat in one package, a time bomb that may or may not go off. The international community, of course, has been seeking to diffuse it before the question is resolved unsatisfactorily.

This article discusses the North Korean crisis and the international community's efforts to resolve it. It considers how the problem could be an opportunity for the creation of a regional security structure. It also advocates the inclusion of legal standards to address North Korea's problems comprehensively. It argues that human rights must be part of this negotiated solution to produce a more sustainable security.

II. Problems and Efforts

A. The nuclear problem

The problem that has most captured the attention of the international community with respect to the Democratic People's Republic of Korea (the DPRK or commonly "North Korea.") is its pursuit of nuclear weapons capability. This is the second time that the DPRK has precipitated a crisis on this issue. The first time was in 1994, when it threatened to withdraw from the 1968 Treaty on the Nonproliferation of Nuclear Weapons (the NPT).¹⁾ Pressure by the People's Republic of China (China) on the DPRK led to the resolution of the problem.²⁾ It paved the way for former

1) Treaty on the Non-Proliferation of Nuclear Weapons, July 1, 1968, 21 UST 483, 729 UNTS 161, entered into force March 5, 1970.

2) Don Oberdorfer, *The Two Koreas, A Contemporary History, Revised and Updated*, (Basic Books: United

United States (US) President Jimmy Carter to participate in mediation, which ultimately resulted in the 1994 Agreed Framework between the US and the DPRK (the Agreed Framework).³⁾ The agreement required the DPRK to freeze its nuclear weapons program in exchange for two light water nuclear reactor power plants and diplomatic recognition by the US. It also provided for fuel aid from the US to cover the energy supply gap until the power plants were completed.

The recent “crisis” is more than two years old. In October 2002, the DPRK allegedly admitted to violating the Agreed Framework in a meeting with US envoy James Kelly. In November 2002, the US, Japan and the Republic of Korea (ROK or commonly “South Korea”) voted to suspend shipments of fuel oil to the DPRK.⁴⁾ In December 2002, the DPRK expelled International Atomic Energy Agency (IAEA) inspectors from its facilities and announced its withdrawal from the NPT. In 2003, the DPRK restarted its plutonium-producing reactor. It began processing its 8,000 spent fuel rods, which is enough nuclear material for six or so bombs.⁵⁾ As of December 2004, experts believe that the DPRK possesses from one to eight nuclear weapons.

The international community’s efforts to resolve this problem have been slow and ineffective. The DPRK at the outset demanded bilateral talks with the US only. The US, however, insisted upon multilateral talks, which have prevailed as the mode of negotiation. The parties to the talks are ROK, Japan, China, Russia, the DPRK, and the US. The US had initially insisted that the DPRK dismantle completely, verifiably, and irreversibly its nuclear capability (both its plutonium and highly enriched uranium efforts) before it would grant benefits. However, it softened its position in June 2004 by offering a “provisional” guarantee not to invade North Korea or seek to oust the Kim Jong Il regime and to support heavy fuel oil shipments by ROK, China, Russia, and Japan immediately upon a commitment by Kim Jong Il

States 2001), p. 320.

3) Agreed Framework between the United States of America and the Democratic People’s Republic of Korea, Geneva, October 21, 1994.

4) International Crisis Group, “North Korea: Where Next for the Nuclear Talks?” *ICG Asia Report* No. 87, November 15, 2004, p. 3.

5) Reuben Staines, “Bush to Sign NK Rights Act Soon,” *The Korea Times*, October 5, 2004.

to dismantle his nuclear weapons programs.⁶⁾ The US would have also started talking directly to the DPRK about lifting some economic sanctions. After three months, if the DPRK sealed and shut its nuclear facilities, further rewards would have been discussed, such as removing the DPRK from Washington’s list of states sponsoring terrorism, thereby removing a block from World Bank funding, and other economic rewards.⁷⁾ However, the DPRK did not respond to the offer. Thus far, three rounds of the six-party talks have been concluded, with little progress. The fourth round, which was scheduled for September 2004, was canceled by the DPRK, which cited nuclear weapons technology experiments by the ROK as among the reasons for the cancellation. The DPRK has demanded that the US drop its “hostile policy aimed at bringing down [its] system” before it will return to the talks.⁸⁾

B. Other serious problems

In addition to being nuclear-weapons capable, the DPRK may be among the largest possessors of chemical weaponry in the world. Estimates cite huge amounts, ranging from 2,500 to 5,000 tons. The ROK Agency for Defense Development has also estimated that the DPRK’s chemical weaponry production capability is 4,500 tons annually in peacetime and 12,000 tons in wartime. The DPRK arsenal reportedly includes all of the major classes of chemical weaponry, such as mustard (blistering), phosgene (choking), hydrogen cyanide (blood) and sarin (nerve agent). This reflects a long-standing commitment to chemical weaponry, dating back to 1961 when the previous DPRK leader Kim Il Sung proclaimed his “Declaration for Chemicalization.”⁹⁾

The DPRK also probably possesses biological weapons. It likely has the capability to produce sufficient amounts of biological agents for military use within weeks of commencing. Its arsenal of agents probably includes anthrax, smallpox,

6) David E. Sanger, “U.S. to Offer North Korea Incentives in Nuclear Talks,” *The New York Times*, June 23, 2004.

7) “Movement on North Korea, Finally,” *The New York Times*, June 25, 2004.

8) “Two Koreas Urge U.S. to Ease Standoff,” *Reuters*, November 14, 2004.

9) “Chemical Overview,” Center for Nonproliferation Studies at the Monterey Institute of International Studies (2003) available at http://www.nti.org/e_research/profiles/NK/Chemical/print/index.prt.

plague, and botulism.¹⁰⁾ In addition, the DPRK has a significant ballistic missile production capability. It has been developing a missile, the Taepodong-2, which would have the capability to reach the continental US.¹¹⁾ The DPRK may also be the world's largest exporter of ballistic missile systems, components and technology, with customers in Iran, Syria, Pakistan, Egypt, and the United Arab Emirates.¹²⁾ The US has attempted to negotiate with the DPRK an end to its missile proliferation since 1996, but the talks stalled. This issue has not been part of the six-party talks aimed at resolving the nuclear problem.

Another area of trade for the DPRK has been trafficking of drugs, endangered species, and ivory; smuggling cigarettes, alcohol and gold; counterfeiting US dollars and other items; and prostitution. Kim Jong Il is in reality running a criminal enterprise. The DPRK attempts to penetrate international crime rings and distributes drugs produced in the DPRK through its embassies abroad. These embassies allegedly must generate profits for Kim Jong Il's personal slush fund.¹³⁾ The profits also may be financing the DPRK's weapons of mass destruction (WMD) production.¹⁴⁾

In the post-9/11 world, the great fear is that the DPRK's trading partners may include terrorist groups. The networks for trading in illegal goods could provide the same channels for reaching terrorists. The distinction between drug trafficking, terrorism and other crimes is becoming increasingly blurred.¹⁵⁾ A major response by the US has been the creation of the Proliferation Security Initiative (PSI) in June 2003. The Initiative includes Australia, the United Kingdom, Canada, France, Germany, Italy, Japan, the Netherlands, Norway, Poland, Portugal, Russia,

10) "Biological Weapons Overview," Center for Nonproliferation Studies at the Monterey Institute of International Studies (2003) available at http://www.nti.org/e_research/profiles/NK/Biological/print/index.prt.

11) Hun Kyung Lee, "North Korea's Missile Program and US Nonproliferation Strategy," *The Korean Journal of Defense Analysis*, Vol. XIV, No. 2 (Fall 2002).

12) Marcus Noland, *Avoiding the Apocalypse, the Future of the Two Koreas* (Washington, D.C.: Institute for International Economics, June 2000) p. 118.

13) *Id.*, pp. 120-121.

14) Woosang Kim and Sung-Kwon Cho, "Human Security in the Korean Peninsula: A Case of the North Korean Drug Trafficking," UNESCO International Conference on Human Security in East Asia, Seoul ROK (June 16, 2003).

15) Raphael F. Perl, Congressional Research Service, "Organized Crime, Drug Trafficking, and Terrorism in a Changing Global environment," Statement before the US House Judiciary Committee (December 13, 2000).

Singapore, Spain, and the US,¹⁶⁾ with other countries also cooperating to various degrees. The PSI countries have agreed to participate in interdiction efforts as allowed by their domestic laws and to create legislation to fill any gaps that may exist in their laws to allow for the fullest authority in stopping transport of illegal items. Notably, neither China nor ROK are PSI members.¹⁷⁾

C. The human rights problem

At the same time as the nuclear problem has unfolded, human rights violations in the DPRK have continued with ruthless persistence. About 200,000 political prisoners in camps suffer forced labor, beatings, torture, testing of chemical and biological weapons, and executions.¹⁸⁾ Many also die from disease, starvation and exposure. More than 2,000,000 North Koreans have died of starvation since the early 1990s because of the failure of the government distribution systems.¹⁹⁾ Currently, nearly one out of every ten children suffers from acute malnutrition and four out of every ten children in North Korea are chronically malnourished. In addition, North Koreans are subject to a "cult of personality" glorifying Kim Jong Il "that approaches the level of a state religion," according to the US Congress.²⁰⁾ Personal religious activities are severely repressed "with penalties that reportedly include arrest, imprisonment, torture and sometimes executions." North Korean law stipulates capital punishment and seizure of assets for a wide variety of "crimes against the revolution."²¹⁾

For North Koreans who flee their country, their fate abroad may offer little relief. North Korean women and girls, particularly those who have fled to China, often suffer kidnapping, trafficking, and sexual exploitation through forced prostitution

16) Michael Byers, "Policing the High Seas: The Proliferation Security Initiative," *The American Journal of International Law*, Vol. 98:536 2004.

17) International Crisis Group, "North Korea: Where Next for the Nuclear Talks?" *ICG Asia Report* No. 87, November 15, 2004, p. 13. The report notes that china is quietly cooperating with the PSI behind the scenes.

18) North Korean Human Rights Act of 2004, *Public Law* No. 108-333 (Oct. 18, 2004), Section 3.

19) *Id.*

20) *Id.*

21) *Id.*

and bride-selling. China and North Korea have been aggressively seeking North Koreans who are in China without permission and forcibly returning them to North Korea, where they face torture and imprisonment, and possible execution.²²⁾

The response of state governments to these conditions has been weak. The prevailing strategy of the six-party talk members has been to try to resolve the nuclear problem in isolation of these well-known abuses. Independently from the nuclear issue, the European Union and the United Nations have issued resolutions condemning the North Korean human rights violations. States such as Germany, Sweden, and the United Kingdom have also bilaterally raised the issue with the DPRK in modest dialogues.

The United States' response has been rather bifurcated. While the State Department produces reports highly critical of the DPRK's human rights abuses, it has not raised the issue in the nuclear discussions. In contrast, the US Congress has produced legislation that calls for human rights to be a "key element in future negotiations between the US, North Korea, and other concerned parties in Northeast Asia."²³⁾ This legislation is the North Korean Human Rights Act of 2004 (the Act). To underline the seriousness of its intent, the Act requires the appointment of a Special Envoy on Human Rights in North Korea.²⁴⁾ This high ranking official is mandated to coordinate and promote human rights efforts and raise human rights issues with North Korean officials.

The Act also authorizes \$2,000,000 for each fiscal year from 2005 to 2008 to support private, nonprofit organizations that promote human rights, democracy, rule of law and the development of a market economy in North Korea.²⁵⁾ The Act also authorizes \$2,000,000 per year to support freedom of information in North Korea by increasing sources of information not controlled by the North Korean government.²⁶⁾ The Act authorizes an additional \$20,000,000 per year for humanitarian assistance, including food, medical supplies, clothing, and shelter.²⁷⁾ It provides that this aid be

22) *Id.*

23) *Id.*, Section 101.

24) *Id.*, Section 107.

25) *Id.*, Section 102(b)(1).

26) *Id.*, Section 104(b)(1).

27) *Id.*, Section 203(c)(1).

given "on a needs basis, and not used as a political reward or tool of coercion."²⁸⁾ However, the Act requires that increases in assistance be conditioned upon substantial improvements in transparency, monitoring, and access to vulnerable populations throughout the country.

Significantly, the Act states the sense of the US Congress that nonhumanitarian aid be linked to substantial progress in human rights in North Korea. Section 202(b)(2) specifies areas for progress: basic human rights, including freedom of religion; family reunification between North Koreans and their descendants and relatives in the US; information regarding Japanese and South Koreans abducted by North Korea and allowing them to leave North Korea; reform of the North Korean prison and labor camp system and allowing independent monitoring of it; and decriminalization of political expression and activity. Nonhumanitarian aid is a reference to the fuel promised in the 1994 Agreed Framework. The Act could therefore have a significant impact on the nuclear negotiations if they likewise involve fuel aid to North Korea in exchange for dismantlement.

Whether the Act actually does have an impact will depend on various factors, including the State Department, President George W. Bush's foreign policy team, and Congress. Some persons in the State Department reportedly oppose the Act, which is no surprise, given that some of the six-party participants are strongly against it. Both North and South Korea view the Act as a tool for regime change, despite the fact that nothing in the Act calls for the removal of Kim Jong Il. China has also been cool, given that the Act specifically pressures it to allow more protection of North Korean refugees on its territory. The greatest source of support for the Act will most likely be found in Congress, which passed the Act unanimously. The bill was pushed largely by evangelical Christians, who were one of the key sources of Bush's reelection victory. If this group mobilizes again for enforcement of the Act, then Congress may well force negotiators to address human rights in some meaningful way. Testimony from North Korean gulag survivors and other graphic evidence of human rights abuses inside North Korea may make neglect of this issue politically untenable.

In addition, the Act calls for consideration of human rights initiatives on a

28) *Id.*, Section 202(b)(1)(B).

multilateral basis, such as that provided by the Organization for Security and Cooperation in Europe (OSCE). This approach would bring in more issues, such as scientific, educational, economic and trade cooperation, in addition to human rights, to extend the scope of negotiations beyond the nuclear issue.²⁹⁾

III. Legal Standards Within a Regional Solution

Given the international community's piecemeal approach to responding to the range of problems posed by the DPRK and the lack of progress in resolving them, a more comprehensive solution as contemplated by the Act merits serious consideration.

When the six-party talks first commenced, the hope had been that they could lead to a more permanent security structure. Here a parallel may be drawn to the early days of the OSCE. The OSCE is the successor organization to the Conference on Security and Cooperation in Europe (CSCE), commonly known as the Helsinki talks. After preliminary talks established the modalities for a three-stage conference, experts from 35 states, encompassing all of Europe (except Albania) plus the US and Canada, participated in discussions from 1973 to 1975 that were comprehensive in scope.³⁰⁾ They concluded the session with a Final Act, which institutionalized the conference with future periodic meetings to further the multilateral process. The CSCE officially became the OSCE in 1995, after the wars in the former Yugoslavia required greater European engagement. A permanent institution was necessary to carry out the CSCE's growing tasks, many of which required daily support.

Transforming the current six-party talks into a permanent institution is a difficult proposition to contemplate, given the lack of progress in resolving the North Korean nuclear issue. But perhaps bringing in other issues, such as human rights, the other WMD threats, and North Korean concerns, such as security guarantees, economic aid and developmental issues, would lead to movement forward. The comprehensive nature of the Helsinki talks may be instructive as to achieving this movement. The

29) *Id.*, Section 106.

30) The Helsinki Process from the CSCE to the OSCE, *available at* <http://www.osce.org/publications/handbook/files/handbook.pdf>.

talks covered three broad areas or "baskets." Basket One encompassed the politico-military aspects of security. Basket Two covered cooperation in fields such as economics, science and technology, and the environment. Basket Three covered cooperation in humanitarian and other fields, such as human rights. The Helsinki talks were able to make progress in these areas through use of linkage. Without having such a broad array of issues, the Cold War blocs would have likely stalemated. In fact, according to Roberta Cohen of the Brookings Institution, "one of the lessons of this period was that only in that broad context of strategic, political and economic issues could progress be made on human rights."³¹⁾ This consideration of human rights led to reforms within the Soviet bloc that ultimately resulted in the end of the Cold War.

Given that how a state treats its citizens is also an indicator as to its credibility in how it will abide by its agreements with other states, human rights are a logical as well as morally correct factor to consider in forging an improved relationship with a problematic state. Human rights also are a strategic consideration. Some observers contend that a correlation exists between the domestic human rights practices of states and their propensity to engage in aggressive international conduct.³²⁾ Human rights abuse may also be a source for radicalization of those who suffer from it. The concept of "human security" recognizes the value of broadening the notion of security from just military terms to produce a more sustainable security that reaches the welfare of ordinary people.

Whether this type of progress can be recreated in the context of East Asia is, of course, a difficult question. The six parties are hardly a cohesive unit. The ROK has not been pleased with the Bush administration's hardline position toward the DPRK. Tensions between the ROK and the US have risen with respect to other issues, such as the deployment of US troops, as the ROK seeks to assert a more independent identity from the US. ROK President Roh Moo-hyun was elected on a broadly anti-US platform. China also stays firmly with its own agenda and has its own history with the DPRK to consider. The Chinese, after all, were the staunch allies of the

31) Roberta Cohen, "Talking Human Rights with North Korea," *Washington Post*, August 29, 2004.

32) William W. Burke-White, "Human Rights and National Security: the Strategic Correlation," 17 *Harv. Hum. Rts. J.* 249, Spring 2004.

DPRK during the Korean War and prevented the US-led United Nations forces from progressing to the DPRK-China border. With casualties in the hundreds of thousands, the Chinese paid a high price for their intervention, which is unlikely to be forgotten by senior military officers. There is also the matter of keeping the Korean community in China stable. Pressuring China to grant protections to North Korean refugees may thus be counter to China's interests. China's own human rights issues also are a disincentive to China's participation in Helsinki-style negotiations.

The benefits, however, of regional cooperation leading to the creation of a regional security structure are likely to outweigh its drawbacks. Former US National Security Adviser Zbigniew Brzezinski writes that East Asian powers "operate in a fluid and still largely unstructured regional context, one that lacks the kind of multilateral frameworks for political, economic, and security cooperation now seen in Europe or even in Latin America."³³⁾ Historical grievances and resentments, in addition to growing economic power, competition, and nationalism among Asian states, hold the potential for serious conflict. China, for example, is aggrieved by the on-going separation of Taiwan and Japan's insufficient repentance for wartime atrocities. Japan views China as a potential security threat and rising economic threat. Both China and Japan have grievances against Russia for loss of territories during World War II. The ROK also remembers the humiliation of Japanese occupation. Korean nationalism is growing and a nuclear North Korea could trigger a nuclear arms race in East Asia. In addition, an Asian naval arms race has been quietly growing, Brzezinski notes, drawing a parallel to the naval rivalry in Europe of the last century. "As a rising power, China is reminiscent of imperial Germany, which was envious of Great Britain, hostile toward France, and contemptuous of Russia; today's China, though increasingly pragmatic about the American role in the Pacific, is neuralgic about Japan, patronizing toward India, and dismissive of Russia."³⁴⁾ The danger, Brzezinski observes, is that East Asia could produce "a replay of Europe's World War I disaster" or, he notes, "Europe's post-1950 success."³⁵⁾ A security structure could steer the region on the better course.

³³⁾ Zbigniew Brzezinski, *The Choice, Global Domination or Global Leadership*, (Basic Books: New York 2004), p. 107.

³⁴⁾ *Id.*

³⁵⁾ *Id.*, p. 120.

The structure could take on various forms. It could be a new organization germinating from the six-party talks. Or it could result from further development of existing organizations and forums. The G-8³⁶⁾ annual summit could be expanded to include China and South Korea to create a G-10. The Asia-Pacific Economic Cooperation (APEC)³⁷⁾ talks have already been used for furthering diplomacy on the North Korean issue. In addition, the Association of Southeast Asian Nations (ASEAN)³⁸⁾ has already embraced expansion with its "plus 3" talks aimed at furthering cooperation with ROK, China, and Japan. And the OSCE³⁹⁾ could not only be a model for a new organization, but could also itself be expanded to encompass East Asia.

The ultimate form of the organization, including the breadth of its membership, would depend on the wider interests of its members. But for the immediate term, solving the North Korean problem would provide the focus for coalescing interested states. Reaching agreement on that issue would then become an opportunity for agreement on a regional security structure as a natural outcome of that negotiation.

Determining how to solve the North Korean problem is obviously no easy task. But to focus on the nuclear aspect only is to deny the reality of the other significant threats posed by the DPRK. Its chemical weapons arsenal is potentially as destructive as its nuclear capability. While the international community has condemned the DPRK's withdrawal from the NPT, it has failed to recognize the necessity of gaining DPRK compliance with the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and Their Destruction (the Chemical Weapons Convention).⁴⁰⁾ This convention, which entered

³⁶⁾ The G8 consists of the French Republic, the Russian Federation, the United Kingdom, the Federal Republic of Germany, Japan, the Republic of Italy, Canada, the US, and representatives from the European Union.

³⁷⁾ APEC's 21 member economies are Australia; Brunei Darussalam; Canada; Chile; People's Republic of China; Hong Kong, China; Indonesia, comma, not semi-colon Japan; ROK; Malaysia; Mexico; New Zealand; Papua New Guinea; Peru; the Republic of the Philippines; the Russian Federation; Singapore; Chinese Taipei; Thailand; the US; Viet Nam.

³⁸⁾ ASEAN includes Indonesia, Malaysia, the Republic of the Philippines, Singapore, Thailand, Brunei Darussalam, Viet Nam, Laos, Myanmar, and Cambodia.

³⁹⁾ OSCE membership includes 55 participating states. See <http://www.osce.org> for the full list.

⁴⁰⁾ Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, Jan. 13, 1993, 1975 UNTS 469.

into force in 1997 after 65 states had ratified it, requires each state party to destroy its chemical weapons and production facilities. The Organization for the Prohibition of Chemical Weapons, located in the Hague, is tasked with implementing the convention's verification provisions. It also includes provisions for the assistance of a state party if it is threatened by chemical weapons. The Chemical Weapons Convention is analogous to the NPT in providing a legally binding mechanism for the reduction of chemical weapons. The DPRK should thus be pressured to enter the Chemical Weapons Convention in addition to the NPT.

Other legal standards should also be invoked to create a legal architecture for a comprehensive solution to the problems posed by the DPRK. The Biological and Toxin Weapons Convention, which the DPRK acceded to in 1987, should be enforced in that it bans the research, development, production, stockpiling or acquisition of biological weapons.⁴¹⁾ The UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the UN Convention Against Transnational Organized Crime and related Protocols, and the UN conventions against terrorism should also be part of the architecture.⁴²⁾ The International Code of Conduct Against Ballistic Missile Proliferation, while not legally binding, could also be invoked to provide standards for curbing North Korean missile exports. In addition, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights must be invoked.⁴³⁾ The DPRK is a party to both of these fundamental human rights treaties.

Legal standards must also extend to the other states in the regional security structure. China, in particular, must be held to its obligations pursuant to the 1951

41) Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, Apr. 10, 1972, 26 UST 583, 1015 UNTS 163.

42) Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 28 ILM 497, available at http://www.undoc.org/pdf/convention_1988_en.pdf. Convention against Transnational Organized Crime, November 15, 2000, UN Treaty Reg. No. 39574, 40 ILM 335. See also Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, opened for signature Dec. 12, 2000, G.A. Res. 55/25, U.N. GAOR, 55th Sess., U.N. Doc. A/45/49 (Vol. 1) (2001). For 12 UN conventions related to terrorism, see <http://untreaty.un.org/English/Terrorism.asp>.

43) International Covenant on Civil and Political Rights, opened for signature Dec. 19, 1966, 999 UNTS 171; International Covenant on Economic, Social and Cultural Rights, opened for signature Dec., 19, 1966, 993 UNTS 3.

Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees (Refugees Convention).⁴⁴⁾ China must provide the UN High Commissioner for Refugees (UNHCR) access to North Koreans inside its border to allow the UNHCR to determine whether they are refugees and require assistance, pursuant to the Refugees Convention and the 1996 Agreement on the Upgrading of the UNHCR Mission in People's Republic of China (PRC) to UNHCR Branch Office in the PRC. Bona fide compliance with these standards means more vigorous protection of North Korean refugees. This protection is a critical change from China's usual labeling of them as mere "economic migrants" to be forcibly repatriated to the DPRK, where they routinely face torture and imprisonment, and sometimes execution.⁴⁵⁾ A comprehensive solution must therefore also include the Refugees Convention to adequately address the plight of North Korean refugees.

The incorporation of the legal conventions that govern the wide range of problems posed by the DPRK provides for greater clarity of standards within a negotiated political solution. These conventions also may enhance diplomatic negotiations and provide potential levers during negotiations when used at the appropriate time. Legal conventions are themselves the product of wide political support and so should be looked to as enhancing the persuasiveness of arguments that espouse their ends. They offer opportunities not only for resolution of the DPRK problems but also for consensus in building a permanent regional security structure.

IV. Conclusion

A comprehensive solution to the problems posed by the DPRK is necessary for achieving true security, given the breadth of these problems. Such a solution must consider the DPRK's human rights abuses as well as the other DPRK problem areas, such as its nuclear and chemical weapons capabilities. This solution should incorporate existing legal conventions to create an architecture of standards for

44) Convention Relating to the Status of Refugees, July 28, 1951, 19 UST 6260, 189 UNTS 137; Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 UST 6260, 189 UNTS 137.

45) The North Korean Human Rights Act, *op cit.*, Section 3. The Act also calls for China to meet its obligations pursuant to the Refugees Convention.

achieving security. Broadening the scope of negotiations also provides more opportunities for cooperation on economic, scientific, and educational issues. Linkage of such an array of issues, including human security and economic benefits, should be utilized to achieve progress. East Asian states should seize the opportunity to find common ground and create a permanent security structure for the region. Resolving the DPRK problem within this context would improve the prospects for a more sustainable security and prevention of another nuclear crisis from erupting in the near future.

The Korean Market for Private Participation in Infrastructure - An Analysis of Risks and Opportunities for Private Investors

*Seung Ho Choi**

Abstract

The driving factor behind Korea's push for development of infrastructure is its recognition in recent years that the acute lack of infrastructure in key sectors affects the country's overall productivity. Despite this pressing need, the government has had to turn to the private sector for its much-needed greenfield infrastructure projects due to budgetary and financial constraints. In this respect, the Korean government firmly recognizes the correlation between a nation's highly-developed infrastructure and its overall competitiveness in today's globalized economy, and it is this need for development which has led the Korean government to focus on its private participation in infrastructure ("PPI") scheme, encouraging both equity and debt participation by domestic and foreign participants.

* Kim, Choi & Lim, Seoul, Korea, Foreign Legal Consultant, 2004 - present; WooYun, Kang, Jeong & Han (Seoul, Korea), Foreign Legal Consultant, 1999 - 2001; Lee & Ko (Seoul, Korea), Foreign Legal Consultant, 2001; Linklaters (Hong Kong), Associate, 2001-2002; Attorney At Law, State Bar of California; United States District Court, Central District of California; Attorney At Law, District of Columbia Bar; University of Southern California, Los Angeles, CA, Bachelor of Science in Business Administration (emphasis in Finance), 1988 - 1992; Loyola Law School, Los Angeles, CA, Juris Doctor, 1995-1998; Georgetown University Law Center, Washington, D.C., LL.M. in Securities & Financial Regulation, With Distinction, 2003 - 2004.

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